

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 18 of 1989

in

SPECIAL CIVIL APPLICATION No 8235 of 1988

with

SPECIAL CIVIL APPLICATION No 8283 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy : YES  
of the judgement? No
4. Whether this case involves a substantial question : YES  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

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KIRITKUMAR MANILAL PATEL

Versus

STATE OF GUJARAT  
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Appearance:

1. LETTERS PATENT APPEAL No. 18 of 1989  
MR AKIL KURESHI for Appellant  
MR ST MEHTA, AGP for Respondent No. 1  
MR RA MISHRA for Respondent No. 2, 3
2. Special Civil ApplicationNo 8283 of 1990  
MR AKIL KURESHI for Appellant  
MR ST MEHTA, AGP for Respondent - State

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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/12/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

The above-numbered Letters Patent Appeal is filed under Clause-15 of the Letters Patent challenging the judgment dated December 14, 1988 rendered by the learned Single Judge, in Special Civil Application No. 8235/88. In Special Civil Application No. 8283/90, an order was passed on July 9, 1992 that it should be heard along with Letters Patent Appeal No. 18/89. That is how this Special Civil Application is placed for final hearing with the above-numbered Letters Patent Appeal. Common questions of facts and law arise for our consideration in both these proceedings. Therefore, we propose to dispose of them by this common judgment.

2. The appellant was appointed on probation as a primary school teacher with effect from February 28, 1984 in the school run by Kheda District Panchayat. On successful completion of the period of probation, he was confirmed as primary teacher by an order dated June 30, 1986 with effect from February 28, 1986. It was alleged against him and two others that they had murdered a girl named Simaben by administering poison to her, as she had refused to marry with the appellant. On August 21, 1986, first information report was filed for the alleged commission of offences punishable under sections 302, 452 read with section 34 of the Indian Penal Code involving the appellant and two others. The appellant was arrested with reference to above referred to offences on August 21, 1986. As he was detained in jail, he was placed under suspension by an order dated October 16, 1986 with effect from August 21, 1986. The appellant and others were tried by the learned Additional Sessions Judge, Nadiad in Sessions Case No. 202/86. The learned Additional Sessions Judge by judgment and order dated April 28, 1987 convicted the appellant and others for the offences punishable under section 302 read with section 34 of the Indian Penal Code and sentenced the appellant to suffer rigorous imprisonment for life. The appellant was also convicted under section 452 of the Indian Penal Code, but no separate sentence was imposed for the said offence.

3. It was the case of the appellant that he was not paid subsistence allowance during suspension from service. Therefore, he filed Special Civil Application No.8235/88 praying the Court to direct the respondents to grant subsistence allowance to him. The learned Single Judge, who heard the petition, concluded that the appellant had not complied with the condition stipulated in the order of suspension viz. that he should not leave headquarter without the permission of Taluka Development Officer. In view of the above-referred to conclusion, the learned Single Judge rejected the petition by judgment dated December 14, 1988, which has given rise to Letters Patent Appeal No.18/89.

4. During the pendency of Letters Patent Appeal, District Primary Education Officer, Kheda District Panchayat, Nadiad passed two orders on February 16, 1990. By one order, suspension of the appellant was revoked with effect from April 28, 1987. By another order, the appellant was dismissed from service with effect from April 28, 1987, as he was convicted by the learned Additional Sessions Judge, Nadiad in Sessions Case No. 202/86 for the offences punishable under sections 302 and 452 read with section 34 of the Indian Penal Code. The appellant, therefore, filed Special Civil Application No. 8283/90 challenging the order of dismissal. As observed earlier, the said petition is ordered to be heard with Letters Patent Appeal No. 18/89.

5. The appellant and others challenged their conviction under section 302 read with section 34 of the Indian Penal Code by filing Criminal Appeal No. 410/87 in the High Court. The appeal filed by the appellant and others came to be accepted by the Division Bench comprising V.H.Bhairavia & S.M.Soni, JJ., vide judgment and order dated July 8, 1992. After acquittal of the appellant, he addressed a representation dated July 15, 1992 to the District Primary Education Officer, Kheda District Panchayat, Nadiad and prayed to reinstate him in service in view of his acquittal recorded by High Court. The said representation is produced by the appellant on the record of Special Civil Application No. 8283/90 by amending the said petition. By way of amendment, the appellant also produced judgment of acquittal recorded by the High Court in Criminal Appeal No.410/87. The learned Counsel for the appellant has stated at the bar that subsequently the appellant was paid subsistence allowance due. As subsistence allowance due was paid to the appellant, we are of the opinion that Letters Patent Appeal No. 18/89 has become infructuous and deserves to be disposed of accordingly.

6. In view of the above-referred to facts, the short question which arises for determination of this Court is whether the appellant is entitled to be reinstated in service after his acquittal by the High Court. The learned Counsel for the appellant submitted that the basis on which the appellant was dismissed from service does not subsist after acquittal of the appellant recorded by the High Court in Criminal Appeal No.410/87 and, therefore, the order of dismissal should be set aside. It was claimed that inspite of representation dated July 15, 1992 made to the District Primary Education Officer, Kheda District Panchayat, Nadiad, the order of dismissal was not revoked by the competent authority and, therefore, direction should be given to the respondents to reinstate the appellant in service with all consequential benefits including backwages.

7. Mr. S.T.Mehta, learned A.G.P. for Government of Gujarat submitted that though the petition was amended in the year 1998, it is not averred by the appellant that he was not gainfully employed at all and, therefore, the respondents should not be ordered to reinstate the appellant in service with backwages. Mr. Anant S. Dave and Mr. R.A.Mishra, learned Counsel appearing for District Primary Education Officer, Kheda District Panchayat, Nadiad have pleaded that having regard to the facts of the case, no direction should be given to the respondents to reinstate the appellant in service with all consequential benefits including backwages.

8. We have heard the learned Counsel for the parties at length. We have also taken into consideration the documents produced on the record of Special Civil Application No.8283/90 as well as Special Civil Application No. 8235/88 out of which Letters Patent Appeal No.18/89 arises.

9. The fact that the appellant was dismissed from service because of his conviction by the learned Additional Sessions Judge, Nadiad, in Sessions Case No.202/86 for the offences punishable under sections 302 & 452 read with section 34 of the Indian Penal Code, is not in dispute. It is also not in dispute that the said conviction is set aside by the High Court in Criminal Appeal No.410/87 and the appellant now stands acquitted of the offences punishable under sections 302 & 452 read with section 34 of the Indian Penal Code. Thus, the basis on which the dismissal order was passed, now no longer subsists. In view of conviction of the appellant for the offences punishable under sections 302, 452 read

with section 34 of the Indian Penal Code, District Primary Education Officer, Kheda District Panchayat, Nadiad had concluded that the appellant had committed offences involving moral turpitude and, therefore, the appellant was dismissed from service in view of the provisions of Rule 10 of the Gujarat Panchayats Service (Discipline and Appeals) Rules. However, independent of conviction of the appellant, it was never the case of the District Primary Education Officer, Nadiad that the appellant was guilty of the offences involving moral turpitude. Under the circumstances, we are of the opinion that in view of acquittal by the High Court in Criminal Appeal No. 410/87, the appellant is entitled to be reinstated in service.

10. The submission that the respondents should be directed to reinstate the appellant in service with backwages, is devoid of merits and cannot be accepted. It is relevant to notice that Special Civil Application No. 8283/90 was filed challenging dismissal order and was amended on March 20, 1998, but nowhere it is averred by the appellant that he was not gainfully employed after his acquittal by the High Court in Criminal Appeal No. 410/87 on July 8, 1992. In the original unamended petition, no prayer was made to direct the respondents to reinstate the appellant in service with all consequential benefits including backwages and the only prayer made was to set aside the order of dismissal dated February 26, 1990 which was passed with retrospective effect. Though the appellant has claimed backwages by way of amending the petition, he has failed to lay factual basis for claiming the said relief. The appellant was appointed as a primary school teacher on February 28, 1984 and, therefore, it is reasonable to infer that he must have been gainfully worked during all this time. When Special Civil Application No. 8283/90 was filed challenging the order of dismissal, at that time the appeal filed by the appellant and others against conviction recorded by the learned Additional Sessions Judge, Nadiad was not decided and the appellant was acquitted by judgment dated July 8, 1992. Thereafter for a pretty long time, no steps were taken by the appellant either for amending the petition or for claiming the relief of backwages and appropriate amendment was made by the appellant only on March 20, 1998. It is an admitted position that the appellant has not worked as a primary school teacher since his dismissal and, therefore, on the principle of 'no work no pay' also he is not entitled to backwages. Having regard to all these relevant factors, we are of the opinion that though the appellant is entitled to be reinstated in service, he is not entitled to backwages.

For the foregoing reasons, Letters Patent Appeal No. 18/89 is disposed of as having become infructuous, with no order as to costs. Special Civil Application No.8283/90 partly succeeds. The order dated February 16, 1990 dismissing the appellant from service with effect from April 28, 1987 is set aside and quashed. The respondents are directed to reinstate the appellant in service with all consequential banefits including continuity of service, but without backwages. The appellant shall be reinstated in service as early as possible and preferably within two months from the date of receipt of the writ. Rule is made absolute to the extent indicated above only in Special Civil Application No. 8283/90, with no order as to costs.

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